

NEW YORK, NEW YORK

DENVER, COLORADO

**ARNOLD & PORTER**

1200 NEW HAMPSHIRE AVENUE, N.W.  
WASHINGTON, D.C. 20036-6885

(202) 872-6700  
CABLE: "ARFOPO"  
FACSIMILE: (202) 872-6720  
TELEX: 89-2733

LOS ANGELES, CALIFORNIA

TOKYO, JAPAN

**ORIGINAL  
FILE**

December 1, 1992

**BY HAND**

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

DEC - 1 1992

Re: Implementation of the Cable Television  
Consumer Protection and Competition  
Act of 1992--Cable Home Wiring  
MM Docket No. 92-260

Dear Ms. Searcy:

Please find enclosed on behalf of the National Association of Telecommunications Officers and Advisors, et. al., an original and 11 copies of Comments of the National Association of Telecommunications Officers and Advisors, et. al. filed in MM Docket No. 92-260.

Any questions regarding the submission should be referred to the undersigned.

Sincerely,

  
Bruce A. Henoch

Enclosures

No. of Copies rec'd  
List A B C D E

0 + 11

10

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL  
FILE  
RECEIVED

DEC - 1 1992

DEC - 1 1992  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
  
Implementation of the  
Cable Television Consumer  
Protection and Competition  
Act of 1992  
  
Cable Home Wiring

MM Docket No. 92-260

TO: The Commission

COMMENTS OF THE  
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS  
OFFICERS AND ADVISORS, THE NATIONAL  
LEAGUE OF CITIES, THE UNITED STATES  
CONFERENCE OF MAYORS, AND THE NATIONAL  
ASSOCIATION OF COUNTIES

The National Association of Telecommunications  
Officers and Advisors, the National League of Cities,  
the United States Conference of Mayors, and the National  
Association of Counties (collectively, the "Local  
Governments") submit these comments in the above-  
captioned proceeding.

I. INTRODUCTION

In this proceeding, the Federal Communications  
Commission ("FCC" or "Commission") seeks comments on  
implementation of Section 16(d) of the Cable Television  
Consumer Protection and Competition Act of 1992 ("1992  
Act") relating to rules governing the disposition,

following the termination of service, of wire installed by cable operators in the homes of cable customers. Congress directed the FCC to promulgate rules that will allow subscribers to retain ownership of the wiring following termination of service and that will foster multichannel service competition, while balancing the need of cable operators to be able to recover the costs of installing the wiring.

Local Governments believe that the FCC should adopt rules establishing a presumption that the subscriber owns the home wiring if: a) the subscriber has paid an installation fee or the installation fee was waived by the cable operator; b) the subscriber has maintained cable service for a reasonable minimum period, such as one year; or c) the franchise agreement specifies a reduced installation fee or no installation fee. Local Governments believe that these presumptions are necessary and appropriate to ensure that subscribers are not faced with new, unexpected, and unwanted costs either at termination or through increased monthly rates, and to protect against anticompetitive behavior.

Further, even in the absence of any of the above-listed factors, before the customer is faced with the choice of paying a fee or having the wiring removed, the operator should be required to make a showing that the

benefits the operator would receive from removing the wiring exceed the costs it would bear in undertaking such removal. If there are circumstances that do not fall within any of the above-listed presumptions, and if an operator can demonstrate that the benefits of removal exceed the operator's costs of removal, the operator should be permitted to remove the wiring if the subscriber is not willing to pay the current depreciated book value of the wiring.

Finally, the Local Governments urge the Commission to adopt rules that require the original operator installing the home wiring, and then any succeeding companies operating a service that makes use of that wiring, to bear responsibility for ensuring that there is no signal leakage from any wiring in customers' homes.

## II. DISCUSSION

### A. Congressional Policy.

Congress directed the FCC to prescribe rules that will enable cable subscribers to retain ownership of the wiring in their homes following termination of service.<sup>1</sup> The FCC must take into account the interest of consumers in avoiding the disruption and expense involved in the

---

<sup>1</sup> H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992) at 118; S. Rep. No. 92, 102d Cong., 1st Sess. (1991) at 23.

removal of wiring and the public interest in fostering multichannel service competition.<sup>2</sup> At the same time, however, the Commission has stated it does not wish to discourage cable companies from investing in wiring new homes. Thus, there are several goals that the home wiring rules should achieve:

- ° allowing customers to retain ownership of the wiring installed in their homes so as to avoid the disruption and inconvenience that would accompany removal of the wiring by the cable operator;
- ° fostering competition in the multichannel video arena; and
- ° ensuring that the cable operators are permitted to recover the costs of installing the wiring so as not to discourage future expansion.

While achieving these varied goals requires balancing of competing interests, the Commission can act to ensure that the public interest is well-served.

#### B. Suggested Rules

The Commission has a responsibility under the 1992 Act to promulgate home wiring rules by February 2, 1993. While the Local Governments urge the FCC to collect and analyze data on the current practices of cable operators in recovering home wiring costs so that the rules can be tested from time to time to insure their fairness to the industry, we urge the Commission

---

<sup>2</sup> Id.

to adopt rules which create a presumption that the cable operator has recovered the cost of installing wiring in subscribers' homes in the following circumstances:

1. If the subscriber has paid an installation fee, it should be presumed that this fee encompasses the costs to the operator of installing home wiring. In addition, if the installation fee was waived as a part of a special promotion or as a marketing tool, it should be presumed that the operator intended to recover the costs in other ways or to bear the costs of installation in order to increase subscription to the system. No later recovery from customers should be allowed unless the promotion specifically contained a minimum term commitment and that commitment was not met. Subscribers should be assured that, if the installation fee is waived when they initially subscribe, they will not be required to pay for these costs at some later date.
2. If the subscriber has maintained cable service for a reasonable minimum period, such as one year, it should be presumed that the operator has recovered the costs associated with home wiring through rate charges.

3. If the cable operator has agreed in the franchise agreement to charge a specific installation fee or no installation fee for some period of time, it should be presumed that the operator has built the cost of installation of home wiring into its agreed-upon fees or its rate structure.

In all of these circumstances, it should be presumed that, upon termination of service, the home wiring becomes the property of the subscriber without a requirement that the subscriber pay additional fees. These rules would be fair to the cable operators, as they allow the operators to recover the costs associated with home wiring by imposing an initial installation fee or a reasonable minimum subscription period. Thus, no loss to the company will occur when ownership of the wiring passes to the customer upon termination.

In circumstances in which the situations identified above are not present, the presumption should still be against forcing the subscriber to make a choice between paying a fee or having the wiring removed. However, the cable operator should be allowed to overcome this presumption with a showing that it has not yet recovered the costs it incurred in installing the wiring through its rates or other fees. If it can make such a showing, the operator should be allowed to

recover from the customer those costs that have not previously been recovered, limited to the current depreciated book value of the wiring, or be permitted to remove the wiring.

However, before presenting the customer with this choice, the company must show that the benefits it will receive from removing the wiring will exceed the company's cost for such removal, including the cost to repair any damage caused by such removal.<sup>3</sup> Should the company be expending an amount of resources to remove the wiring that exceeds the likely minimal value the operator receives for recovery of the used wires, it should be presumed that the operator is removing the wiring merely for anticompetitive reasons, i.e., to prevent other companies from using the wiring. In this case, the rules should allow the subscriber to retain ownership of the wiring, as the Commission should not allow the cable operators to engage in such anticompetitive conduct. A fundamental goal of both proponents and opponents of the 1992 Act was to foster multichannel service competition, not to establish

---

<sup>3</sup> The experience of Local Governments has been that it is standard industry practice for operators not to insist upon removal of wiring inside the home because of the costs to the company to undertake such removal.



mechanisms that allow monopoly providers of service to erect barriers to effective entry and competition.

C. Signal Leakage.

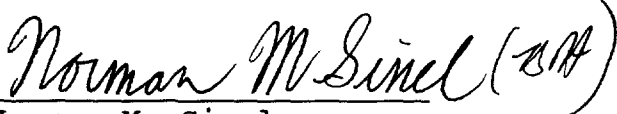
Because cable television utilizes the same frequencies as many sensitive radio systems, including aeronautical systems, it is vital that no signal leakage occur. Local Governments believe that it is the responsibility of the cable operator to ensure that there is no signal leakage in the entire system, including the wires installed in subscribers' homes. The cable operator is in the best position to identify and to rectify signal leakage, and it must take responsibility for the system that it operates, including all of the facilities it uses. This holds true for successor companies as well. The FCC should prescribe rules ensuring that when a new company provides service to a home that has previously been wired, it assumes the responsibility held by the previous company to identify and repair any signal leakage problems throughout its system, including the wiring in its subscribers' homes.

III. CONCLUSION

The Local Governments believe that the rules proposed herein effectively balance the public interest goals of the 1992 Act discussed above. While ensuring

that cable operators have ways of recovering the costs of installation of home wiring, the proposed rules take into account the customers' interests in minimizing disruption from removal of home wiring and in not bearing any new and unjustified costs through increased monthly rates or other fees. In addition, these rules ensure that cable operators will not remove wiring solely for anticompetitive reasons.

Respectfully submitted,

A handwritten signature in cursive script that reads "Norman M. Sinel" followed by a circled set of initials "BJH".

Norman M. Sinel  
Patrick J. Grant  
Stephanie M. Phillipps  
Bruce A. Henoch

Arnold & Porter  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 872-6700

Counsel for  
Local Governments

Date: December 1, 1992